

SUBCHAPTER Q—ENVIRONMENTAL PROTECTION

PART 161—REGULATIONS FOR IMPLEMENTATION OF THE NATIONAL ENVIRONMENTAL POLICY ACT (NEPA)

Subpart A—General

- Sec.
161.1 Purpose and scope.
161.2 Policy.
161.3 Applicability.
161.4 Definitions.

Subpart B—NEPA and Departmental Decisionmaking

- 161.5 Major decision points and timing.
161.6 Responsibilities of departmental officials.
161.7 Categories of actions.

Subpart C—Environmental Review Procedures

- 161.8 General description of the Department's NEPA process.
161.9 Specific steps in the Department's NEPA process.

Subpart D—Coordination of Other Requirements of NEPA

- 161.10 Non-Federal applicants for permits.
161.11 Environmental review and consultation requirements.
161.12 Environmental effects abroad of major departmental actions.

AUTHORITY: National Environmental Policy Act (NEPA), as amended, 42 U.S.C. 4321 *et seq.*; E.O. 11514, 34 FR 4247, as amended by E.O. 11991, 42 FR 26927; 22 U.S.C. 2658, as amended.

SOURCE: 45 FR 59554, Sept. 10, 1980, unless otherwise noted.

Subpart A—General

§ 161.1 Purpose and scope.

These Departmental regulations are designed to supplement the CEQ Regulations and provide for the implementation of those provisions identified in §1507.3(b) of the CEQ Regulations. The CEQ Regulations are incorporated herein by reference. The Department's regulations seek to assure that environmental considerations and values are incorporated into the Department's decisionmaking process and assign re-

sponsibility within the Department for assessing the significant environmental effects in the United States of the Department's actions.

§ 161.2 Policy.

It is the policy of the Department of State to use all practicable means, consistent with the Department's statutory authority, available resources and national policy, to:

- (a) Protect and enhance the quality of the environment;
- (b) Ensure that environmental amenities and values are appropriately considered in Departmental actions;
- (c) Integrate planning and environmental review procedures with the Department's decisionmaking process;
- (d) Invite and facilitate, when appropriate, Federal, State and local governmental authorities and public involvement in decisions which affect the quality of the environment; and
- (e) Recognize the worldwide and long-range character of environmental concerns and, when consistent with the foreign policy of the United States, lend appropriate support to initiatives, resolutions, and programs designed to maximize international cooperation in anticipating and preventing a decline in the quality of the world environment.

§ 161.3 Applicability.

The provisions of these regulations apply to decisions on all Departmental actions which may affect the quality of the environment within the United States. The Department is establishing separate environmental review procedures under Executive Order 12114 (January 4, 1979) for actions having potential effects on the environment of global commons or areas outside the jurisdiction of any nation, or on the environment of foreign nations.

§ 161.4 Definitions.

Definitions for many terms used in these regulations may be found in section 1508 of the CEQ Regulations. In addition, for the purpose of these regulations, the term:

Department of State

§ 161.5

(a) *Responsible action officer* means the Department officer principally responsible for the preparation of action memoranda and other documents relating to a given Departmental action to which by these regulations apply. Ordinarily, the responsible action officer will be the country or office director whose office has action responsibility for a given action.

(b) *CEQ Regulations* means the regulations implementing the procedural provisions of the National Environmental Policy Act, issued by the Council on Environmental Quality on November 29, 1978 (43 FR 55978-56007), and codified at 40 CFR parts 1500-1508.

(c) *United States* means the States, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Marianas, the Trust Territory of the Pacific Islands, American Samoa, the U.S. Virgin Islands, Guam and the other territories and possessions of the United States, including the territorial seas thereof. For the purpose of these regulations, actions having significant environmental effects on the resources of the U.S. continental shelf or resources of the U.S. Fishery Conservation Zone subject to the jurisdiction of the United States shall be considered to be actions having significant environmental effects in the United States.

(d) *Environmental document* means an environmental assessment, an environmental impact statement, a Finding of No Significant Impact or a Notice of Intent prepared under these regulations.

Subpart B—NEPA and Departmental Decisionmaking

§ 161.5 Major decision points and timing.

(a) The responsible action officer shall ensure compliance with these regulations at the earliest practicable stage of Departmental study, consideration or planning of a proposed major Federal action which could significantly affect the quality of the human environment. To accomplish this the responsible action officer must ensure that data developed during the review process is collected, analyzed and made available for consideration early in planning and decisionmaking when it

will be most valuable in formulating, reviewing and deciding upon proposals for Departmental action.

(b) Environmental analysis and review of a proposed Departmental action shall be conducted as early as practicable so as to be timely, yet late enough to be relevant to the decision-making.

(c) Environmental documents should, whenever possible, accompany the principal action memorandum relating to a proposed action. An environmental document required in conjunction with conclusion of an international agreement shall, where possible, be prepared and circulated for review and comment before final negotiations begin. The completed environmental document should thus ordinarily accompany the principal action memorandum or request for authority to negotiate an agreement under the Department's Circular 175 regulation (11 FAM 720).

(d) To the maximum extent possible an environmental document should be prepared before the establishment of a final United States position on a proposal. In such cases the document should indicate the alternatives under consideration without specifying a Departmental preference. If the content and dimensions of a proposed action will not be clear until after the conclusion of an international negotiation or if a decision to proceed on an action involving another nation or international organization is required on short notice and before the environmental document can be prepared, the environmental document should be prepared as soon as possible after the conclusion of an agreed text of a treaty or agreement on the proposed action. If the Senate's advice and consent to a treaty with potential significant environmental effects in the United States will be sought, the final environmental impact statement should accompany other decision documentation for ratification. Legislative environmental impact statements on proposed treaties or legislation shall conform to the requirements of § 1506.8 of the CEQ Regulations and must be prepared in time for Congressional hearings and deliberations.

(e) Because actions having effects on the United States may to varying degrees be initiated, influenced and conducted by other countries, it is recognized that the preparation of environmental documents for such actions must be adjusted to meet a variety of circumstances. Bearing in mind the degree to which other countries possess information on and the ability to affect the decision under consideration, responsible action officers shall seek at all times to prepare environmental analysis documents as early as feasible in the decisionmaking process.

§ 161.6 Responsibilities of departmental officials.

(a) *General.* As a general rule, responsibility for preparing environmental analysis documents will follow the Department's standard organizational practices; in this way environmental considerations and awareness of environmental responsibilities will be integrated most readily and effectively into the usual decisionmaking processes.

(1) *Departmental bureaus.* Each bureau within the Department shall be responsible for:

(i) Implementing these regulations and incorporating them into its normal decisionmaking processes;

(ii) Identifying actions it intends to initiate which may affect significantly the environment of the United States and employing the environmental evaluation procedures outlined in these regulations to ensure that necessary actions are taken to meet the requirements of applicable laws and regulations;

(iii) Coordinating environmental assessment-related activities for which it is responsible with the Office of Environment and Health in the Bureau of Oceans and International Environmental and Scientific Affairs and supporting and assisting the Office of Environment and Health in implementing these regulations as required; and

(iv) Providing the personnel required to implement these regulations, informing the Office of Environment and Health and the Office of the Legal Adviser whenever it is anticipated that environmental documents will be prepared under these regulations, and con-

sulting the Office of Environment and Health and the Office of the Legal Adviser as necessary for guidance and assistance in the preparation of such documents.

(2) *Bureau of Oceans and International Environmental and Scientific Affairs.* Through its Office of Environment and Health the Bureau shall have the primary responsibility for ensuring the Department's compliance with environmental policies, regulations and procedures. It shall provide policy and professional direction and guidance within the Department for implementing these regulations. It shall also assist other bureaus in obtaining appropriate scientific advice and budgetary resources to implement the regulations. The Office of Environment and Health will act as the focal point for implementation, working closely with the Departmental bureaus and the Office of the Legal Adviser. The Bureau and other involved bureaus will work closely with the Assistant Secretary for Congressional Relations in the preparation of environmental documents relating to legislation. In carrying out its responsibilities the Bureau shall:

(i) Coordinate the formulation, development and revision of Departmental policies and positions on matters pertaining to environmental evaluation and review;

(ii) Develop and ensure the implementation of Departmentwide standards, procedures and working relationships for environmental review and compliance with applicable environmental laws and regulations;

(iii) Develop, as an integral part of the Department's basic decision processes, procedures to ensure that environmental factors are properly considered in all relevant proposals and decisions;

(iv) Monitor these processes to ensure that Departmental procedures are achieving their purposes;

(v) Advise, assist and inform Departmental bureaus of the technical and management aspects of environmental analysis, and of the relevant expertise available in and outside the Department;

Department of State

§ 161.7

(vi) Establish and maintain working relationships with the Council on Environmental Quality, Environmental Protection Agency, and other federal, State and local governmental agencies concerned with environmental matters;

(vii) Represent the Department in working with other government agencies and organizations to formulate, revise and achieve uniform understanding and application of government-wide policies relating to the environment;

(viii) Consolidate and transmit to the appropriate parties Departmental comments on environmental impact statements and other environmental reports prepared by other agencies; and

(ix) Acquire information for and prepare other Departmental reports on environmental assessment matters.

(3) *Office of the Legal Adviser.* The Office of the Legal Adviser is the principal Departmental authority on the legal aspects of environmental matters and the implementation of these regulations and shall advise and assist Departmental Bureaus in these matters.

(4) *Bureau Environmental Coordinators.* Each Departmental bureau and major office shall designate an officer to act as coordinator, adviser and principal point of contact for environmental matters within the bureau. The bureau coordinator will advise and assist the bureau in implementing these regulations and serve as a member of the Departmental Committee of Environmental Coordinators.

(5) *Departmental Committee of Environmental Coordinators.* A Departmental Committee of Environmental Coordinators shall be established to assist in coordinating Departmental implementation of these regulations; in providing advice on major issues, policies and procedures relating to the Department's implementation of environmental analysis requirements; and in ensuring general conformity of Departmental implementation practices. The Committee's responsibility will be to exchange information on the implementation of these regulations, assist bureaus in early identification of Departmental actions which should be analyzed for environmental effects and help to coordinate and provide the appropriate analysis. The Committee will

be chaired by the Office of Environment and Health and will be comprised of bureau and office coordinators designated by the respective bureaus and offices.

(6) *Outside contractors.* Qualified outside contractors may be employed to assist Departmental officers in preparing environmental documents as required under these regulations.

§ 161.7 Categories of actions.

Departmental officers shall review each major Departmental action having a potentially significant effect on the quality of the environment in the United States. The need to prepare formal environmental documents will depend on the scope of the action and the context and intensity of any environmental effects expected if the action is implemented. Departmental actions can generally be grouped into three categories, as follows:

(a) *Actions normally requiring environmental impact statements.* Any Departmental action deemed to have a "significant effect upon the quality of the human environment" of the United States requires the preparation of an environmental impact statement. The criteria to be used in determining significance are set forth in § 1508.27 of the CEQ Regulations. The Department has reviewed representative actions and has found no common pattern which would enable it to specify actions normally requiring environmental impact statements. If developments later enable such designations to be made the Department will publish a description of proposed actions for such designation in the FEDERAL REGISTER.

(b) *Actions categorically excluded from the requirement to prepare environmental impact statements.* Categorical exclusion, as defined in § 1508.4 of the CEQ Regulations, provides for exclusion from environmental review of specified actions which have as a class been found to have no significant impact on the quality of the human environment. Neither an environmental assessment nor an environmental impact statement is ordinarily required for such actions. Departmental actions categorically excluded from the requirements of these regulations include the following:

(1) Routine conduct of Departmental and overseas political and economic functions, including reporting on political and economic developments, trends and activities, communicating to host governments United States Government views, maintaining contact with foreign officials and individuals, and facilitating trade opportunities abroad and U.S. business expansion in foreign markets;

(2) Provision of consular services—visas, passports and citizenship, and special consular services, such as issuing or reviewing passports and visas, taking legal depositions, notarizing absentee ballots and other documents and delivering retirement checks, social security payments and veterans benefits;

(3) Conduct of routine administrative functions, such as budget and finance, personnel and general services. This includes routine administrative procurements (e.g., general supplies, negotiating leases for office space or staff housing, ordering supplies and arranging for customs clearances); financial transactions, including salaries, expenses and grants; routine management, formulation and allocation of the Department's budget at all levels (this does not exempt the preparation of environmental documents for proposals included in the Department's budget when required); and personnel actions (e.g., promotions, hirings, and counseling American and host country employees who work for the Department of State);

(4) Preparing for and participating in conferences, workshops or meetings for information exchange, data collection or research or study activities; and

(5) Document and information exchanges.

Even though an action may be categorically excluded from the need for an environmental impact statement, if information developed during the planning for the actions indicates the possibility that the particular action in question may nonetheless cause significant environmental effects, an environmental assessment shall be prepared to evaluate those effects. Based upon the assessment, a determination will be made whether to prepare an environmental impact statement. The Depart-

ment may designate additional actions for categorical exclusion by publishing a listing of actions proposed for such designation in the FEDERAL REGISTER.

(c) *Actions normally requiring environmental assessments.* An environmental assessment shall provide the basis of the determination whether an environmental impact statement is required. A Departmental action shall require the preparation of an environmental assessment if the action is not one known normally to require an environmental impact statement and is not categorically excluded. Departmental actions normally included in this category are actions for which the Department has lead-agency responsibility and which may significantly affect the human environment of the United States, such as those actions involving:

(1) Issuance of permits for construction of international bridges and pipeline (see Executive Order 11423 and the International Bridge Act of 1972 (Pub. L. 92-434, 86 Stat. 23));

(2) Wetlands, floodplains, endangered species and national historical, archaeological and recreational sites (see also specific requirements for environmental review and consultation in § 161.11 of these regulations); and

(3) Ocean dumping, control of toxic substances, disposal and storage of wastes and radioactive substances.

(d) *Emergencies and other exceptional circumstances.* Not every Departmental activity will be considered a major Federal action for the purposes of these regulations. Several limited classes of action which might ordinarily be subject to these regulations will not be considered major Federal actions requiring the preparation of an environmental impact statement. Among them are the following:

(1) Actions taken in emergency circumstances and disaster and emergency relief activities as defined in § 1506.11 of the CEQ Regulations (in such circumstances the responsible action officer should consult with the Office of Environment and Health which shall consult with the Council on Environmental Quality about appropriate alternative arrangements);

(2) Mandatory actions required under any treaty or international agreement

to which the United States Government is a party, or required by the decisions of international organizations or authorities in which the United States is a member or participant except when the United States has substantial discretion over implementation of such requirements;

(3) Payment of contributions, either assessed or voluntary, to any international organization of which the United States is a member pursuant to the obligation of a treaty or other international agreement or which is not for the purpose of carrying out a specifically identifiable action which would affect the environment; and

(4) Support for or acquiescence in (by affirmative vote or agreement to consensus) an activity or expenditure of funds by an international organization where the United States has no unilateral right to control such expenditures.

Subpart C—Environmental Review Procedures

§ 161.8 General description of the Department's NEPA process.

In reviewing proposed actions for potential environmental effects in the United States responsible action officers will follow the procedural steps set forth below. These steps are developed in conjunction with the procedural steps required by the CEQ Regulations which are referenced in the following sections.

(a) *Preliminary environmental evaluations.* Early in the process of considering any possible action the responsible action officer shall review the action to determine if it may cause potential significant environmental effects on the environment of the United States. A proposed action shall be reviewed initially to determine into which of the following three basic categories of action it falls:

(1) Actions normally requiring environmental impact statements;

(2) Actions categorically excluded from environmental impact statements; or

(3) Actions normally requiring environmental assessments. If the responsible action officer concludes that the proposed action is a major action potentially having significant effects in

the United States he should, in cooperation with other appropriate Departmental officials, carry out the steps described in these regulations. If during his review of the location of potential environmental effects or following preparation of an environmental assessment it is determined that the action could affect the environment of the global commons or a foreign nation the officer is responsible for ensuring compliance with the Department's procedures for implementing Executive Order No. 12114 on Environmental Effects Abroad of Major Federal Actions (Foreign Affairs Manual, Volume 2).

(b) *Environmental Assessment.* An environmental assessment is a concise document which analyzes potential environmental effects to determine if an environmental impact statement is required (CEQ Regulations §§1501.3 and 1508.9). If the action does not fall into either the category of those actions normally requiring an environmental impact statement or that of actions categorically excluded from the requirement to prepare an environmental impact statement, then the responsible action officer, in cooperation with other Departmental officials, shall prepare an environmental assessment to determine whether it is necessary to prepare an environmental impact statement or a "Finding of no significant impact". If the action normally requires an environmental impact statement, there is ordinarily no need for the preparation of an environmental assessment and the environmental impact statement process should be initiated without preparing such an assessment. If the action is categorically excluded, no further environmental review is needed. If an environmental assessment is prepared it may also be used to evaluate whether the proposed action may have effects outside the United States.

(c) *Finding of no significant impact.* If the environmental assessment indicates that the environmental effects of the action in the United States are not significant, then the responsible action officer shall make a "Finding of no significant impact", thereby concluding the NEPA review process (CEQ Regulations §§1501.4 and 1508.13).

(d) *Environmental impact statement.* If the environmental assessment demonstrates that the environmental effects of the action with the United States may be “significant” (see § 1508.27 of the CEQ Regulations) the Department is required to prepare an environmental impact statement (EIS) in accordance with these regulations (see also CEQ Regulations § 1501.8, part 1502 and §§ 1506.2 through 1506.7). In preparing the environmental impact statement the following steps will be carried out:

(1) *Notice of intent to prepare an EIS.* If an impact statement is required, the Department will publish in the FEDERAL REGISTER a “Notice of intent” to prepare such a statement (CEQ Regulations §§ 1501.7 and 1508.22).

(2) *Scoping procedures.* The Department will then hold a scoping meeting with interested agencies and individuals to determine the proper content (“scope”) of the statement (CEQ Regulations §§ 1501.7 and 1508.25).

(3) *Draft environmental impact statement (DEIS).* The Department will then prepare a draft EIS (DEIS) which will be filed with the Environmental Protection Agency and circulated to agencies and the public for comment for at least 45 days, except where the CEQ Regulations and these regulations permit the time period to be shortened (CEQ Regulations § 1501.8, part 1502, §§ 1506.2 through 1506.7, 1506.10(d) and 1506.11; 161.7(d), 161.9(n)(2)).

(4) *Final environmental impact statement (FEIS).* In light of the comments and following any revision in the draft EIS, the Department will file with the Environmental Protection Agency and circulate to agencies and the public a final EIS at least 30 days before making a final decision on the action, except where the CEQ Regulations and these regulations permit the time period to be shortened (CEQ Regulations §§ 1506.9, 1506.10(d), 1506.11; 161.7(d), 161.9(n)(2)).

(5) *Record of decision.* After making a decision on the action, the Department will make available a formal “Record of decision” (CEQ Regulations § 1505.2).

§ 161.9 Specific steps in the Department’s NEPA process.

(a) *Decision whether to prepare an EIS.* In deciding whether to prepare an environmental impact statement, the responsible action officer shall make an initial review in the early planning stages of a proposed action to identify and evaluate potential environmental effects of the actions and all reasonable measures which may be taken to mitigate adverse impacts. This review must be conducted in conjunction with all requests under the Department’s Circular 175 procedure (11 FAM 720), with all actions involving the obligation of funds within the Department’s annual or supplemental budget submissions to the Office of Management and Budget, and with other actions when a potentially significant environmental impact may result. The responsible action officer shall ensure that the principal action memoranda prepared for such actions properly reflect the environmental review in all cases. No written statement is required in the case of actions which do not raise the question of environmental impacts. The environmental evaluation document prepared shall be considered along with political, economic and other decision-making factors relating to the proposed action.

(1) *Review of the categories of actions.* During the initial environmental review of the proposed action, the responsible action officer should classify the proposed Departmental action as one either normally requiring an environmental impact statement, normally not requiring such a statement, or normally requiring an environmental assessment. (See § 1504.1 of the CEQ Regulations and § 161.7 of these regulations.)

(i) *Actions normally requiring environmental statements.* Environmental assessments are not required for actions which it is already known will require the preparation of environmental impact statements. For each major Departmental action which, in the view of the responsible action officer meets the criteria of this section, he shall, in cooperation with the Office of Environment and Health, initiate steps to prepare an environmental impact statement. This will be accomplished by

Department of State

§ 161.9

preparing a "Notice of intent" to prepare an EIS (see § 1508.22 of the CEQ Regulations). The Office of Environment and Health shall arrange for publication of the notice in the FEDERAL REGISTER (see § 1507.3(e) of the CEQ Regulations). The responsible action officer shall then apply the procedures set forth in § 161.8 of these regulations to determine the scope of the proposed EIS, and proceed to prepare and release the environmental impact statement in accordance with CEQ and Departmental regulations. If, however, the responsible action officer believes that the proposed action, though included within or closely similar to one which normally requires the preparation of an EIS, will itself have no significant impact, he should conduct an environmental assessment in accordance with the CEQ Regulations (§ 1508.9). If the assessment demonstrates that there will be no significant impact, he should prepare a "Finding of no significant impact" and provide for public review a notice of this finding in accordance with §§ 1501.4(e) and 1506.6 of the CEQ Regulations.

(ii) *Actions categorically excluded.* Separate detailed documentation is not normally required for actions which are categorically excluded and which are therefore exempt from the requirement of preparations of an environmental assessment or environmental impact statement. However, the responsible action officer shall note in the action memorandum concerning the action that the proposed action has been reviewed under the Department's environmental procedures and determined to be categorically excluded. The Office of Environment and Health shall periodically review actions in the classes categorically excluded under these regulations to determine if the original decision to categorically exclude the class remains valid. If such a review determines that a proposed action may have a significant impact on the human environment the necessary revision in the categorical exclusion shall be made and an environmental assessment shall be prepared to determine the need for the preparation of an environmental impact statement.

(iii) *Actions normally requiring environmental assessments.* For each action

meeting the criteria of this section the responsible action officer shall prepare an environmental assessment (see §§ 1501.3 and 1508.9 of the CEQ Regulations) and, on the basis of that assessment, determine if an EIS is required. If the determination is that no environmental impact statement is required, the responsible action officer shall, in coordination with the Office of Environment and Health, prepare a "Finding of no significant impact" (see §§ 1501.4 and 1508.13 of the CEQ Regulations). The "Finding of no significant impact" shall be made available to the public through direct distribution and publication in the FEDERAL REGISTER. If the determination is that an environmental impact statement is required, the official shall proceed with the "Notice of intent" to prepare an EIS and the subsequent steps in the preparation and release of an EIS in accordance with the CEQ Regulations (§§ 1501.7, 1507.3 and 1508.22) and these regulations.

(2) *Preparation of environmental assessments.* Environmental assessments, as defined in the CEQ Regulations (§ 1508.9), should be prepared as directed in § 1501.3 of the CEQ Regulations. The environmental assessment shall be used to determine whether to prepare an environmental impact statement or a "Finding of no significant impact". The assessment shall include a brief discussion of the need for the proposed action, of alternatives and of environmental impacts and a listing of agencies and persons consulted in preparing the assessment.

(3) *Notice of intent to prepare an EIS.* As soon as practicable after deciding to prepare an environmental impact statement and before initiating the scoping process (see § 161.9(b) of these regulations) the Department or another lead agency, if one is designated in accordance with § 1501.5 of the CEQ Regulations, shall publish in the FEDERAL REGISTER a "Notice of intent" to prepare an EIS in accordance with §§ 1501.7 and 1508.22 of the CEQ Regulations. The Office of Environment and Health shall arrange for publishing the notice.

(b) *Scoping.* The Department shall conduct an early and open meeting with interested agencies and the public

for determining the scope of issues to be addressed in a given environmental impact statement and for identifying the significant issues related to a proposed action. The elements of the scoping process are defined in § 1501.7 of the CEQ Regulations and must include consideration of the range of actions, alternatives, and impacts discussed in § 1508.25 of the CEQ Regulations.

(c) *Cooperation with other agencies.* Departmental officials are encouraged to cooperate with other agencies and the public throughout the conduct of the Department's NEPA process. The Office of Environment and Health shall ensure also that the Department reviews the draft and final impact statements submitted for review by other agencies (§ 1502.19 of the CEQ Regulations). Where appropriate and to eliminate duplication it shall arrange to prepare environmental assessments and impact statements jointly with other Federal or State agencies. Where possible it will arrange for the department to "adopt" statements prepared by other agencies (§ 1506.3 of the CEQ Regulations). It shall arrange lead and cooperating agency responsibilities for preparing environmental documents (see §§ 1501.5 and 1501.6 of CEQ Regulations).

(d) *Preparation of draft environmental impact statement.* The responsible action officer shall be responsible for the preparation of the draft environmental impact statement in the manner described in § 1501.8, part 1502, and §§ 1506.2 through 1506.7 of the CEQ Regulations. Preliminary copies of the draft environmental impact statement and attachments shall be submitted to the Office of Environment and Health before any formal review is conducted outside the Department. This submission shall be accompanied by a list of Federal, State, and local officials (Part 1503 of the CEQ Regulations) and a list of other interested parties (§ 1506.6 of the CEQ Regulations) whose comments shall be sought. The Office of Environment and Health shall review the draft and obtain additional comments from other appropriate Departmental bureaus and offices.

(e) *Review of and comment on draft EIS.* For external review, the Office of Environment and Health shall trans-

mit five copies of the revised draft statement to the Environmental Protection Agency (EPA) Office of Federal Activities. EPA will publish a notice of the statement's availability the following week in the FEDERAL REGISTER. Upon transmission of the draft statement to EPA, the Office of Environment and Health shall also seek the views of appropriate agencies and individuals in accordance with Part 1503 and §§ 1506.6 and 1506.9 of the CEQ Regulations. It shall specify that replies are required at a stated date not earlier than 45 days from the date of NEPA publication of the draft statement availability. Any views submitted during the comment period shall be provided to the responsible action officer in the Department for consideration in preparing the final statement. To the fullest extent possible, requirements for review and consultation with other agencies on environmental matters established by statutes other than NEPA, such as the review and consultation requirements of the Endangered Species Act of 1973, as amended, should be met before or through this review process (see § 161.11 of these regulations). In addition, the draft EIS shall list all environmentally-related federal permits, licenses or other approvals required to implement the proposal as specified in § 1502.25(b) of the CEQ Regulations.

(f) *Public involvement.* (1) Departmental officials will make diligent efforts to involve the public in implementing these regulations as provided in §§ 1501.4(e), 1503.1(a)(e) and 1506.6 of the CEQ Regulations.

(2) Interested persons can obtain information on the Department's environmental impact statements and other aspects of the Department's NEPA process by contacting the Director, Office of Environment and Health, Room 7820, Department of State, Washington, DC 20520 (tel. 202/632-9266). Information pertaining to the NEPA process may be sent to the above address. FEDERAL REGISTER notices concerning the Department's environmental documents shall specify where such information relevant to the documents in question may be obtained.

Department of State

§ 161.9

(3) The responsible action officer shall identify those persons, community organizations, environmental interest groups, international organizations or other bodies which may have an interest in or be affected by the proposed Departmental action and who should therefore be involved in the NEPA process. With the assistance of the Office of Environment and Health, the responsible action shall transmit a list of such persons, groups and organizations to the Office of Environment and Health at the same time he submits:

(i) A recommendation regarding a "Finding of no significant impact";

(ii) A "Notice of intent to prepare an EIS";

(iii) A recommendation on possible public hearings (see §1506.6(c) of CEQ Regulations);

(iv) A draft EIS, or

(v) A final EIS.

(4) The responsible action officer shall consult with the Office of Environment and Health and make recommendations regarding the need for public hearings. The Office of Environment and Health shall, as necessary, review such recommendations with the Office of the Legal Adviser.

(g) *Preparation of final environmental impact statement.* (1) After conclusion of the review process with other Federal, State and local agencies and the public, the responsible action officer shall consider suggestions received and revise the draft environmental impact statement as appropriate in accordance with part 1502 and §1501.8 and §§1506.2 through 1506.7 of the CEQ Regulations.

(2) Five copies of the preliminary final environmental impact statement, with attached copies of the comments received and suggested responses, shall be provided to the Office of Environment and Health. The Office of Environment and Health will, as appropriate, obtain additional comments from any other appropriate Departmental bureau or offices and notify the responsible action officer of any further changes required and the number of final statements to be transmitted. The Office of Environment and Health shall submit five copies of the final statement to the Environmental Protection Agency's Office of Environ-

mental Review. Copies shall also be sent to all parties who commented and to other interested parties in accordance with §1506.9 of the CEQ Regulations.

(3) Each draft and final statement, the supporting documentation, and the "Record of decision" (see §161.9(h) of these regulations) shall be available for public review and copying at the Office of Environment and Health (OES/ENH), Room 7820, Department of State, Washington, DC 20520 (tel. 202/632-9267).

(h) *Record of the decision.* At the time of the decision on the proposed action, the responsible Departmental official shall consult with the Office of Environment and Health and prepare a concise "Record of decision" (see §1505.2 of the CEQ Regulations).

(i) *Timing of EIS preparation and action decision.* Preparation of an environmental impact statement shall be initiated as soon as the responsible action officer, in consultation with the Office of Environment and Health and the Office of the Legal Adviser, has determined that the statement shall be prepared. Except where permitted by the CEQ Regulations (§§1506.10(d), 1506.11) and these regulations (§§161.7(d), 161.9(n)(2)), no decision on the proposed action shall be made by the Department until the later of the following dates:

(1) Ninety (90) days after publication by EPA of a notice of availability of a Departmental draft EIS.

(2) Thirty (30) days after publication by EPA of a notice of availability of a departmental final EIS.

(j) *Implementing and monitoring the decision.* Section 1505.3 of the CEQ Regulations establishes the procedures to be followed by the Department in monitoring to assure that any mitigation measures or other commitments associated with the decision and its implementation are carried out. The Office of Environment and Health will maintain general oversight and cooperate with bureau officers in such monitoring.

(k) *Supplemental environmental impact statements.* Departmental officials shall supplement a draft EIS whenever an alternative which is substantially different from those discussed in the draft is under consideration or when the

draft is otherwise out of date. A final EIS shall be supplemented when a substantial change is made in the proposed action or when significant new information on the environmental impacts comes to light. A supplemental EIS should be prepared, circulated and approved in accordance with the provisions of §1502.9 of the CEQ Regulations. No supplemental EIS need be prepared when the final decision on the action in question has already been made. If there are reasons not to prepare a supplemental EIS when one ordinarily would be called for, the responsible action officer should consult with the Office of Environment and Health, which shall consult with the Council on Environmental Quality on the matter.

(l) *Programmatic and generic environmental impact statements.* (1) Before preparing an environmental document under these regulations the responsible action officer should determine if there exists a generic or programmatic environmental document analyzing actions, effects or issues similar to those involved in the proposed action. A generic environmental document reviews the environmental effects that are generic or common to a class of Departmental actions which may not be specific to any single country or area. Where such a document is prepared it could be applied to a number of similar specific country applications. If a generic document exists and if it deals with relevant similarities in the action, such as common timing, environmental impacts, alternatives, methods of implementation or subject matter it will not be necessary to prepare further environmental documentation.

(2) A programmatic environmental document shall focus its analysis on the environmental aspects of an entire program rather than on the specific elements of the program. If a programmatic environmental document has already been prepared the responsible action officer should determine whether it adequately deals with the environmental effects of the particular action under review. If the programmatic document adequately reviews the environmental impacts of the action under consideration, then additional environmental documentation is not required under these regulations.

In preparing environmental documents on specific actions, Departmental officers shall consider the advisability of modifying or expanding the documents so they may serve as generic or programmatic documents for a broader range of actions.

(m) *Amendments.* Amendments to these regulations may be made by the Assistant Secretary for Oceans and International Environmental and Scientific Affairs in consultation with other Departmental bureaus and the Office of the Legal Adviser. Such amendments will be published in the FEDERAL REGISTER after consultation with the Council on Environmental Quality, in accordance with §1507.3 of the CEQ Regulations, and public review and comment.

(n) *Modifications.* The Department's procedures for preparing environmental documents may be modified to accommodate the following circumstances:

(1) *Classified material.* Most Departmental environmental documents will not normally contain classified or administratively controlled material (see §1507.3(c) of the CEQ Regulations); in some cases, however, an environmental document must include such material to evaluate adequately environmental effects. In such cases Departmental environmental documents, or portions thereof, may be classified. Such material should, if possible, be confined to a classified annex of the environmental document. Approval for classification must be granted with the concurrence of the Assistant Secretary for Oceans and International Environmental and Scientific Affairs and the Office of the Legal Adviser, and the assistant secretary of the bureau with the action responsibility for the proposed action. In these cases, Departmental environmental documents or portions thereof may be classified in accordance with the criteria set forth in Executive Order 12065, dated December 1, 1978. Handling and disclosure of classified or administratively controlled material shall be governed by 22 CFR part 9. The portions of an environmental document which are not classified or administratively controlled will be made available to persons outside the Department, as provided in 22 CFR part 9.

Department of State

§ 161.11

Classification does not preclude the obligation to ensure that environmental documents are reviewed by competent scientific and technical experts. Appropriate arrangements will be made through the Office of Environment and Health for Federal agency review of classified or administratively controlled environmental documents.

(2) *Time periods for environmental review.* When necessary to comply with other specific statutory requirements or for compelling reasons of national policy the Department may, by agreement with the Environmental Protection Agency, modify time periods specified by the CEQ Regulations for preparing environmental documents in accordance with § 1506.10 of the CEQ Regulations. See also provisions for emergency circumstances contained in § 1506.11 of the CEQ Regulations and § 161.7(d) of these regulations.

Subpart D—Coordination of Other Requirements of NEPA

§ 161.10 Non-Federal applicants for permits.

The Department is responsible for issuing international permits for the construction of bridges and oil pipelines that cross the international boundaries with Canada and Mexico. The Office of Environment and Health will assist in preparation of the required environmental analysis documentation for such permits. Applicants for international permits may obtain information on the type of environmental information needed and the extent of the applicant's participation in the necessary environmental studies and their documentation from the Office of the Legal Adviser, Department of State, Washington, DC 20520 (tel. 202/632-0349). Applicants are encouraged to consult early with the Department on the necessary environmental and other requirements in order to expedite the NEPA process.

§ 161.11 Environmental review and consultation requirements.

In addition to the environmental review requirements of NEPA the Department has other statutory environmental review and consultation requirements. Departmental officials, in

cooperation with the Office of Environment and Health and the Office of the Legal Adviser shall, to the maximum extent possible, conduct environmental review and consultation for these additional requirements concurrently with and integrated with preparation of assessments, and environmental impact statements. The principal additional requirements affecting the Department of State's actions are outlined below.

(a) Section 7 of the Endangered Species Act, as amended, 16 U.S.C. 1531 *et seq.*, requires identification of and consultation on aspects of any Departmental action that may have effects in the United States on listed species or their habitat. As appropriate, written request for consultation, along with the draft environmental document, shall be conveyed by the Office of Environment and Health to the Regional Director of the U.S. Fish and Wildlife Service or the National Marine Fisheries Service, as appropriate, for the Region in the United States where the action will be carried out.

(b) Section 106 of the National Historic Preservation Act of 1966, as amended, 16 U.S.C. 470(f), requires identification of National Register properties, eligible properties, or properties in the United States which may be eligible for the National Register within the area of the potential impact of a proposed Departmental action. Evaluation of the impact of the action on such properties shall be discussed in draft environmental impact statements and transmitted to the Advisory Council on Historic Preservation for comments.

(c) Executive Order 11988 (Floodplains Management) and Executive Order 11990 (Wetlands), requires identification of actions which will occur in or affect a floodplain or wetland (e.g., in areas along the boundary with Canada or Mexico). A comparative evaluation of such actions shall be discussed in draft environmental impact statements and transmitted to the U.S. Water Resources Council for comments.

(d) Fish and Wildlife Coordination Act, 16 U.S.C. 661 *et seq.*

(e) Section 309 of the Clean Air Act of 1955, as amended, 42 U.S.C. 7609.

§ 161.12

22 CFR Ch. I (4–1–03 Edition)

(f) Clean Water Act of 1977, 33 U.S.C. 1251 *et seq.*

(g) Coastal Zone Management Act of 1972, as amended, 16 U.S.C. 1451 *et seq.*

(h) Marine Protection, Research and Sanctuaries Act of 1972, as amended, 16 U.S.C. 1401 *et seq.*

(i) Deepwater Port Act of 1974, as amended, 33 U.S.C. 1501 *et seq.*

(j) Marine Mammal Protection Act of 1972, 16 U.S.C. 1361 *et seq.*

§ 161.12 Environmental effects abroad of major departmental actions.

Departmental officials shall analyze actions under their cognizance with

due regard for the environmental effects in the global commons and areas outside the jurisdiction of any nation and in foreign jurisdictions. Such analysis shall be prepared in accordance with separate Departmental procedures (Foreign Affairs Manual, Volume 2), dated September 4, 1979 for implementing Executive Order 12114, “Environmental Effects Abroad of Major Federal Actions” (44 FR 1957), dated January 4, 1979.